



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/857,362	10/16/2001	Bernd Hessing	10191/1832	3262
26646	7590	03/11/2009		
KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004			EXAMINER ROBERTS, BRIAN S	
			ART UNIT 2419	PAPER NUMBER
			MAIL DATE 03/11/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 09/857,362	Applicant(s) HESSING ET AL.
Examiner BRIAN ROBERTS	Art Unit 2419

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 February 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
 Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
 NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 18-25,27-31 and 33-37.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/Hong Cho/
Primary Examiner, Art Unit 2419

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's reply has not overcome the rejection of claims 18-25, 28-31 and 34-37.

On pg. 7 of the Remarks, the applicant contends that the specification (page 5, line 30 to page 6, line 11; page 9, line 31 to page 10, line 3; page 11, lines 20-30) supports transmitting the digitally coded traffic information according to a subset of options.

The Examiner respectfully disagrees. While the original disclosure supports coding and decoding according to a subset of options, the original disclosure does not support a transmitting the digitally coded traffic information according to a subset of options. What are the options for transmitting? The specification makes no mention of any possible options for transmitting.

On pg. 7 of the Remarks, the applicant contends the feature of transmitting unit for transmitting a signal including the digitally coded traffic information is supported on pg. 11 lines 14-24.

The Examiner respectfully disagrees. Claim 25 establishes antecedent basis for the limitation "the digitally coded traffic information" in claim 27. Therefore the claimed transmitting unit of claim 27 must transmit the digitally coded traffic information received by the receiving unit of claim 25. The cited portion makes no mention of a transmitting unit for transmitting the digitally coded traffic information received by the receiving unit.

On pg. 7 of the Remarks, the applicant contends the feature of a receiving unit for receiving a signal that includes the digitally coded traffic information is supported on pg. 13 lines 10-20.

The Examiner respectfully disagrees. Claim 31 establishes antecedent basis for the limitation "the digitally coded traffic information" in claim 33. Therefore the claimed receiving unit of claim 33 must receive the digitally coded traffic information transmitted by the transmitting unit of claim 31. The cited portion makes no mention of a receiving unit for receiving a signal that includes the digitally coded traffic information.

On pg. 11 of the Remarks, the applicant contends Final Action does not address the required motivation to modify Israni to provide the subject matter of claim 18.

The Examiner respectfully disagrees. As cited in the Final Action, the motivation is that the modification results in a smaller traffic data message containing only the desired data components and would yield the predictable result of a savings in transmission resources including a shorter transmission time for the traffic message, and a shorter processing time for the traffic message by the transmitter and receiver.

On pg. 12. of the Remarks, the applicant contends that mere conformity with a standard format for ALERT-C messages does not disclose or suggest coding traffic information in accordance with a subset of possible options where the options relates to at least one of a TMC message format and the ALERT-C syntax.

The Examiner respectfully disagrees. The Final Action does not state that Israni et al. discloses coding traffic information in accordance with a subset of possible options where the options relate to at least one of a TMC message format and the ALERT-C syntax.

On pg. 14 of the Remarks, the applicant contends that the examiner's conclusion of obviousness is based upon improper hindsight reasoning.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).